

**Federal Defenders
OF NEW YORK, INC.**

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March 3, 2023

By ECF

Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

**Re: United States v. Sayfullo Saipov
S1 17 Cr. 722 (VSB)**

Dear Judge Broderick:

We write regarding the Court's final penalty-phase instructions.

Last September, just before voir dire began, in accordance with the Court's deadline, the parties jointly submitted DE #566, containing, for the most part, agreed-on instructions and an agreed-on verdict form for the penalty phase. The filing specifically identified the relatively few passages or phrases about which the parties disagreed and provided accompanying footnotes with the parties' respective positions on each such disagreement.

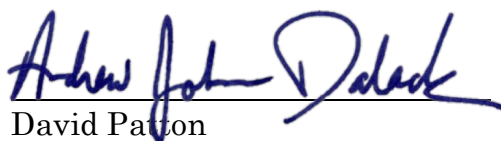
Last Monday, February 27, 2023, as we neared completion of the defense's penalty case, we submitted to the government an updated mark-up of that earlier joint submission. It included some minor modifications based solely on developments that have occurred in the proceedings, such as instructions later given by the Court and the Court's rulings on issues concerning aggravating factors.

Yesterday afternoon, March 2, 2023, we received the government's response. We were quite surprised to see that, rather than just addressing our limited updates and proposing limited ones of their own based on subsequent developments in the proceedings, the government seeks to remove or change numerous instructions to which the parties jointly agreed in their pretrial submission, DE #566. And it does so not based on any new development in the case or intervening change in the law or facts, but rather apparently because it has simply decided to revisit the charge *ab initio*, oppose instructions it has agreed to since before the trial began, and request other (often contrary) instructions it never mentioned at, or since, the time of the joint submission. Many of the government's new, out-of-the-blue proposals — including on critical aspects of the charge — are erroneous, one-sided, depart from instructions already given Mr. Saipov's jury, depart from

instructions consistently given in other SDNY capital trials, or are otherwise inappropriate.

Because the charge conference is on Monday, March 6, 2023, and we understand the Court will be finalizing its final charge over the weekend, there is simply not enough time to negotiate further with the government in the hope of arriving at an updated joint submission. Accordingly, I am attaching the defense's updated proposed jury instructions and updated proposed verdict form (in Word) along with PDF versions of the documents we transmitted to the government on Monday, February 27, 2023.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Andrew John Dalack", written over a horizontal line.

David Patton
Andrew Dalack
Sylvie Levine
David Stern

Attorneys for Sayfullo Saipov

Cc: Government Counsel